

Attention: **Renata Hesse**

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Voice Number:

From: **Tom Moertel**

Company: Moertel Co.

Fax Number: 412-341-6618

Voice Number:

Subject: Microsoft Settlement

**Comments:**

Please admit the following letter as my comments under the Tunney Act regarding the proposed Microsoft Settlement.

205 Dell Avenue  
Pittsburgh, PA 15216

January 23, 2002

Renata B. Hesse  
Antitrust Division  
U.S. Department of Justice  
601 D Street NW  
Suite 1200  
Washington, DC 20530-0001

Dear officials of the Department of Justice:

As a small-business owner and software professional with more than a decade's experience creating software for Windows, Macintosh, Unix, and Linux operating systems, I am writing pursuant to the Tunney Act to comment on the revised proposed Final Judgment (PFJ) in *United States v. Microsoft*.

I am deeply troubled that the PFJ, when scrutinized from a technical viewpoint, fails to satisfy any of the requirements for a remedies decree as set forth by the Court of Appeals ruling (section v.d., p. 99). The PFJ does not unfetter the market from Microsoft's anticompetitive conduct, terminate Microsoft's illegal monopoly, deny Microsoft the fruits of its statutory violation, or ensure that there remain no practices likely to result in monopolization in the future. Rather, the PFJ allows many of Microsoft's anticompetitive practices to continue—effectively legitimizing these illegal practices—and provides license for Microsoft further to abuse and extend its monopoly.

Rather than enumerate my specific concerns here, I will refer you to the findings of Dan Kegel's analysis,<sup>†</sup> which summarizes the technical failings of the PFJ. I agree with Mr. Kegel that the PFJ fails to take into account Windows-compatible competing operating systems, contains misleading and overly narrow definitions and provisions, fails to prohibit anticompetitive license terms currently used by Microsoft, fails to prohibit intentional incompatibilities historically used by Microsoft to protect and extend its monopoly, and fails to prohibit anticompetitive practices

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<sup>†</sup>on the web at <http://www.kegel.com/remedy/letter.html>

towards OEMS.

I also agree with Mr. Kegel's conclusion that the PFJ allows and even encourages anticompetitive practices to continue, would delay the emergence of competing Windows-compatible operating systems, and is therefore counter to the public interest. Further, I am appalled that, despite the best intentions of the Department of Justice, the PFJ permits so many of Microsoft's illegal practices to continue unfettered that it effectively legitimizes these practices and threatens to make Microsoft's abuses into a government-sanctioned benefit of its monopoly.

Therefore, I must urge the Department of Justice to withdraw its consent to the existing PFJ and begin work on a new proposal that provides meaningful and effective remedies for Microsoft's illegal business practices. To do otherwise would likely result in a monumental miscarriage of justice and, ultimately, irreparable harm to the competitive environment that is vital to our nation's promising technology industry and the economy it supports. Again, I must urge you to withdraw your consent for this fundamentally flawed proposal.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas Moertel", with a stylized flourish at the end.

Thomas G. Moertel